CONTENTS

1 EMPLOYEES

Ralph D. Mawdsley

Introduction 2
Discrimination in Employment 2
- Race 3
- Religion 5
- Sex 6
- Age 7
- National Origin 7
- Disability 8

Substantive Constitutional Rights 9
- Speech 9
- Association 11
- Religion 12
- Privacy 12
- Substantive Due Process 13

Procedural Due Process 13
- Liberty and Property Interests 14
- Aspects of Notice 16
- Aspects of Hearing 17

Dismissal, Nonrenewal, Demotion, and Discipline 18
- Insubordination 19
- Unprofessional Conduct, Unfitness, Willful Neglect of Duty 20
- Immorality 22
- Incompetence 23
- Compliance with School Board Policies and State Statutes 23

Reduction-in-force and Involuntary Leaves of Absence 28
- Necessity for Reduction-in-force 29
- Elimination of Position 30
- Selection of Employees 30
- Realignment/Reassignment 31
- Call-back Rights 32

Contract Disputes 32
- Board Policies and Contract Stipulations 32
- Administrative Regulations and Statutory Provisions 35

Tenure. 37

Tenure Status 37
Tenure by Default or Acquiescence 38
Certification 39
Certification Standards 39
Decertification, Revocation, or Suspension 40
Conclusion 41

2 SCHOOL GOVERNANCE

Donald F. Uerling

Introduction 44
State Education Agencies and Officials 44
State Boards of Education 44
State Commissioners of Education 45
State Departments of Education 46
State Funding 47
State Finance Plans 47
Desegregation Plans 48
Special Education 49
Allocation of State Funds 49
Special Schools and School Districts 50
Charter Schools 50
Special School Districts 51
Special Schools 51
Special Governance Arrangements 51
School District Boundary Changes 52
School District Board Membership 53
Selection of Board Members 54
Removal of Board Members 55
Miscellaneous Election Issues 56
School District Board Meetings 56
When a Meeting is Required 57
Open Meetings 57
Powers of School District Boards 59
Statutory Authority 59
Delegation of Authority 59
Board Policy 60
School District Financial Affairs 62
Taxing Authority 62
Bonds and Leases 64
Use of School District Funds 65

School District Employment Affairs 66
Administrators 66
Teachers 68
Support Staff 70
School District Contracts 73
Goods and Services 74
School Construction Authority 75
School District Facilities 76
Student Claims of Mistreatment 77
General Claims 77
Sexual Harassment and Abuse 78
General Tort Liability 79
Defamation 79
Negligence 80
School Transportation 82
School Premises 83
Notice of Claims 84
Conclusion 87

3 PUPILS

William E. Camp

Introduction 89
Issues Relating to Public School Attendance 90
Compulsory Attendance 90
Transfer of Students 92
Tuition and Fees 94
Private and Parochial Schools 94
Substantive Rights of Students 95
First Amendment Religious Rights 95
First Amendment Freedom of Speech 97
Sexual Abuse and Harassment By Students 99
Sexual Abuse and Harassment By Employees 101
Privacy 105
Community Service 107
Search and Seizure 107
Other 110
Sanctions for Student Misconduct 111
Generally 111
Suspension and Expulsion 114

Desegregation 117
Desegregation Plan Oversight 117
Cross-district Remedies 120
State Court Cases 121
Conclusion 121

4 BARGAINING

Julie F. Mead

Introduction 123
Constitutional Issues 124
First Amendment 124
Fourteenth Amendment 124
Recognition And Representational Issues 125
Rights And Obligations Of
Exclusive Bargaining Representatives 126
Scope Of Bargaining 127
Mandatory Topics Of Bargaining 127
Permissive Topics Of Bargaining 129
Greivability And Arbitrability 129
Presumption And Arbitrability 129
Procedural Issues 131
Judicial Review 133
Salary And Benefits 133
Working Conditions 136
Dismissal And Nonrenewal 136
Reduction-in-force 138
Miscellaneous 139
Conclusion 140

5 STUDENTS WITH DISABILITIES

Allan G. Osborne, Jr.

Introduction 144
Entitlement to Services 145
Procedural Safeguards 147
Evaluation 148
Rights of Parents or Guardians 148

Development of Individualized Education Programs 149
Change in Placement 149
Dispute Resolution 151
Administrative Hearings 152
Court Proceedings 155
Standing to Sue 156
Statute of Limitations 156
Actions Under Other Statutes 157
Placement 159
Appropriate Educational Placement 160
Least Restrictive Environment 162
Private Facilities 163
Related Services 163
Discipline 164
Remedies 166
Damages 167
Tuition Reimbursement 168
Compensatory Services 170
Attorney fees 170
Other IDEA Issues 172
State Laws 174
Indiana 174
New Hampshire 175
New York 175
North Carolina 176
Discrimination Under the Rehabilitation Act, Section 504 176
Students 177
Elementary and Secondary 177
Higher Education 178
Other Section 504 Issues 180
Americans with Disabilities Act 180
Conclusion 181

6 TORTS

William J. Evans, Jr.

Introduction 183
Negligence 184
Injuries 184
Off School Property and After School Hours 184

School Settings During School Hours 186
En Route to and from School 188
In School Buildings and on School Grounds 190
Corporal Punishment 191
Negligence Defenses 192
Immunity 192
Common Law (Governmental Immunity) 192
Statutory Immunity 193
Other Defenses 195
Comparative Negligence 195
Notice of Claim 196
Liability Insurance 198
Employee Injuries 200
Workers' Compensation 202
Defamation/Intentional Infliction of Emotional Distress 204
Constitutional Torts 206
Student Initiated Cases 206
Conclusion 212

7 SPORTS

Linda A. Sharp

Introduction 214
Eligibility 214
Longevity 214
Age 215
Transfer 216
Discipline 217
Salary Cap for Coaches 218
Classifications of Parochial Schools 218
Outside Participation 219
Discontinuance of Sports 219
Student Handbook Procedures 220
Equality of Programs 220
Gender 220
Race 222
Disability 222
Tort 222
Intentional 223
Assault and Battery 223

Defamation 224
Hazing 225
Negligence 225
Participants 225
Spectators 234
Employment 235
Adverse Employment Decisions 235
Refusal to Renew Coaching Contract 235
Contract Disputes 236
Collective Bargaining 237
Discrimination 237
Gender 237
Civil Rights 238
First Amendment 239
Miscellaneous 239
Criminal 239
Contracts 240
Workers' Compensation 241
Trademark Infringement 241
Fraudulent Conveyance 242
Real Property 242
Data Practices Act 242
Administrative Law 243
Conclusion 243

8 HIGHER EDUCATION

Robert M. Hendrickson

Introduction 248
Intergovernmental Relations 249
Legislative Authority 250
Board Authority 250
Accreditation 252
Sunshine Laws 253
Taxation 254
Zoning 255
Jurisdiction 257
Ownership 257
University Hospitals 258
Federal Statutory and Constitutional Issues 259

First Amendment 259
Criminal Prosecutions 259
Privacy 261
Discrimination in Employment 262
Title VI of the Civil Rights Act of 1964 262
Title VII of the Civil Rights Act of 1964 263
Procedures 264
Shifting Burden of Proof 266
Class Action Suits 267
Retaliation 267
The Equal Pay Act 269
Title IX of the Education Amendments of 1972 270
Age Discrimination In Employment 270
Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act 272
Otherwise Qualified Individuals 272
Reasonable Accommodation 273
Decisions on the Merits 273
Hiring Discrimination 274
Faculty Employment 274
First Amendment Speech 274
Nontenured Faculty 275
Nonrenewal 275
De Facto Tenure 277
Breach of Contract 277
Denial of Tenure 277
Allegations of Civil Rights Violations 279
Dismissal During the Contract 280
Part-Time Faculty 280
Tenured Faculty 281
Dismissal for Cause 281
Denial of Employee Privileges 281
Dismissal for Financial Exigency 282
All Employees 283
Collective Bargaining 283
Bargaining Unit Membership 283
Unfair Labor Practices 283
Grievance Procedures 285
Administration and Staff 285
Individual Rights 285
Procedural Issues 285
Property Rights 286

Freedom of Speech 287
Discrimination 288
Retaliation 289
Contracts 289
Breach of Contract 289
Procedural Issues 290
Denial of Benefits 290
Sexual Harassment 292
Title VII and Title IX 293
Judicial Procedures 294
Sexual Assault 295
Students 296
Admissions 296
Financial Aid 297
Policies and Regulations 297
Institutional Eligibility 298
Individual Eligibility 299
Bankruptcy 300
Chapter 7 300
Chapter 13 301
Service Scholarships 302
Collections 302
Child Support 304
Freedom of Speech 305
Freedom of Association 305
Discipline 306
Nonacademic Infractions 306
Academic Dismissal 307
Other Academic Issues 310
Constitutional Issues 311
Federal Statutory Issues 312
Title IX 312
Family Educational Rights and Privacy Act 313
Protection from Abuse Act 313
Civil Rights 313
Liability 314
Personal Injury 314
Alcohol 314
Strict Liability 314
Sexual Assault 315
Scope of Duty 315
Bodily Injury 316

On Campus 316
Injury in Class 319
Residence Halls or Living Units 320
Sports Activity 320
Off-Campus Institution Sponsored or Sanctioned Events 321
Medical Malpractice 322
Negligence 324
Vicarious Liability 325
Workers' Compensation 326
Intentional Torts 326
Defamation 326
Deceptive Practices 328
Contract Liability 328
Breach of Warranty or Fraud 328
Breach of Contract 329
Insurance Contracts 331
Bidding 332
Antitrust 333
Patents and Copyrights 334
Gifts 335
Conclusion 336

9 FEDERAL AND STATE LEGISLATION

Gus Douvanis

Introduction 337
Federal Legislation 337
State Legislation 339
Crime and Violence Prevention 339
Student Discipline 341
Employment Issues 343
Curriculum 345
Funding 347
Governance 348
School Choice 349
Attendance 350
Students with Disabilities 351
Higher Education 352
Miscellaneous 353
Conclusion 354

10 EDUCATION RELATED

Paul R. Downing

Introduction 355
First Amendment 356
  Freedom of Speech 356
    Independent Contractors 356
    Restrictions on Speech 357
    Public Forum Doctrine 358
  Freedom of Religion 359
Fourteenth Amendment 360
  Equal Protection 360
  Due Process 361
Fourth Amendment 361
Religious Freedom Restoration Act 363
Discrimination in the Workplace 365
  Age Discrimination in Employment Act 365
  Sexual Harassment 367
  Pregnancy Discrimination Act 368
  Section 504 and the Americans with Disabilities Act 369
  Religious Discrimination 370
Collective Bargaining 371
Employee Retirement Income Security Act 372
Voting Issues 373
Psychological Privilege 374
Damages Awards 375
Conclusion 377

TABLE OF CASES 381

CASES BY JURISDICTION 397

INDEX 415